

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:20-cv-00660-M

NATASHA PHILIPPI,)	
)	
Plaintiff,)	
v.)	
)	
DINE BRANDS GLOBAL, INC.,)	ORDER
APPLEBEE'S RESTAURANTS MID-)	
ATLANTIC, LLC, and)	
APPLEBEE'S SERVICES, INC.,)	
)	
Defendants.)	

Before the court is Plaintiff's Motion for Entry of Default [DE 24]. On February 10, 2021, this court granted Plaintiff leave to amend the operative pleading, and the proposed Amended Complaint was filed that same day. DE 16, 17. The court also instructed Defendants Applebee's Restaurants Mid-Atlantic, LLC and Dine Brands Global, Inc. (who had already appeared in the case) to file an answer or other response to the amended pleading in accordance with Rule 15 of the Federal Rules of Civil Procedure, which provides that an answer or other response must be filed "within 14 days after service of the amended pleading." Fed. R. Civ. P. 15(a)(3). Thus, the Defendants' response was due to be filed on or before February 24, 2021.


Defendants did not file an answer or other response within the deadline; accordingly, on March 2, 2021, the Clerk of the Court issued a notice directing the Plaintiff to "proceed in accordance with Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1 to obtain an entry of default." DE 22. That same day, all named Defendants filed an Answer to the Amended Complaint. DE 23. On March 9, 2021, Plaintiff filed the instant motion setting

forth the procedural history of the case and seeking an order entering default against Defendants Applebee's Restaurants Mid-Atlantic, LLC and Dine Brands Global, Inc. DE 24.

The Fourth Circuit instructs that “the law disfavors disposition by default and accords preference to resolving a case on its merits.” *Saunders v. Metro. Prop. Mgmt., Inc.*, 806 F. App'x 165, 168 (4th Cir. 2020) (citing *Tazco, Inc. v. Dir., Office of Workers Comp. Program*, 895 F.2d 949, 950 (4th Cir. 1990) and *Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp.*, 843 F.2d 808, 811 (4th Cir. 1988)). Defendants responded to the present motion arguing that all Defendants had “filed and served an Answer to the Amended Complaint on March 2, 2021, 6 days late” and explaining that counsel had “inadvertently mis[-]calendared the deadline for Defendants Applebee's Restaurants Mid-Atlantic, LLC, and Dine Brands Global, Inc. to answer as 21 days (per Rule 12), instead of 14 days (per Rule 15).” DE 25 at ¶¶ 4, 5. Plaintiff did not file a reply in support of her motion.

The court finds Defendants have demonstrated excusable neglect for their failure to file an answer before the February 24, 2021 deadline. In light of the Fourth Circuit's preference that cases are resolved on their merits, the Plaintiff's motion is DENIED.

SO ORDERED this 25th day of March, 2021.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE